



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

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OPINION 13-0207

71-1-1 MUNICIPAL FIRE & POLICE CIVIL SERVICE

La. R.S. 33:2181; La. R.S. 40:1372(4)-(5); La. R.S. 40:2402; La. R.S. 40:2531

Mr. Robert Lawrence
State Examiner
8550 United Plaza Boulevard
Suite 901
Baton Rouge, Louisiana 70809

The provisions of La. R.S. 33:2181 (Fire Fighters' Bill of Rights) and La. R.S. 40:2531 (Law Enforcement Officers' Bill of Rights) are applicable to the municipal fire and police civil service board whenever it conducts investigations of fire or police classified employees with a view to disciplinary action. The provisions of La. R.S. 40:2531 are applicable to the municipal fire and police civil service board whenever it conducts investigations of police classified employees with a view to disciplinary action. The phrase "police employees as defined by La. R.S. 40:1372(5)," as used in La. R.S. 40:2531, applies only to police personnel employed by the Division of State Police in the Department of Public Safety. The phrase "law enforcement officers employed by any municipality," as used in La. R.S. 40:2531, applies to all police employees, including the elected or appointed head of a law enforcement department, who are authorized to make arrests, perform searches and seizures, or execute criminal warrants, and who are responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state.

Dear Mr. Lawrence:

Our office received your request for an opinion regarding the Fire Fighters' Bill of Rights, La. R.S. 33:2181, and the Law Enforcement Officers' Bill of Rights, La. R.S. 40:2531. You indicated in your request that your office is frequently called upon for procedural advice when employees of classified fire and police services are the subjects of investigations and interrogations with a view to corrective or disciplinary action. As stated in your request, municipal fire and police service boards are authorized to conduct investigations of any officer or employee of the classified service with a view to disciplinary action.¹ Based on your review of the applicable law, your office is concerned about the application of Fire Fighters' Bill of Rights and the Law Enforcement Officers' Bill of Rights when an investigation or interrogation of a classified fire or police service employee is conducted by a municipal fire and police service board. Your office is particularly concerned about the references to the employee's appointing authority or the appointing authority's designee in the Fire Fighters' Bill of Rights. In order to address your concerns, you have requested an opinion of the Attorney General addressing the following questions:

- (1) Whether the provisions of La. R.S. 33:2181 are applicable to the municipal fire and police civil service board (which is neither the

¹ Municipal civil service boards are authorized to conduct investigations of any officer or employee with a view to disciplinary action. See La. R.S. 33:2477(C), La. R.S. 33:2537(5), La. R.S. 33:2500(C), and La. R.S. 33:2560(C)

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appointing authority nor the appointing authority's designee) whenever it conducts investigations of fire classified employees with a view to disciplinary action.

- (2) Whether the provisions of La. R.S. 40:2531 are applicable to the municipal fire and police civil service board whenever it conducts investigations of police classified employees with a view to disciplinary action.
- (3) Whether the phrase "police employees as defined by La. R.S. 40:1372(5)," as used in La. R.S. 40:2531, applies only to police personnel employed by the Division of State Police.
- (4) Whether the phrase "law enforcement officers employed by any municipality," as used in La. R.S. 40:2531, excludes positions in such classifications as Jailer or Correction Officer, Police Communications Officer or Dispatcher, Secretary to the Police Chief, Departmental Records Clerk, and any other class comprised of positions that are typically not commissioned.

In order to answer your inquiries, it is necessary to review the statutory provisions governing the Fire Fighters' Bill of Rights and the Law Enforcement Officers' Bill of Rights. See La. R.S. 33:2181 and La. R.S. 40:2531.

La. R.S. 33:2181, the Fire Fighters' Bill of Rights, provides that certain minimum standards are applicable when a fire employee is under investigation with a view to possible disciplinary action, demotion, or dismissal.

La. R.S. 33:2181(1) defines a "fire employee" as follows:

"Fire employee" includes any person employed in the fire department of any municipality, parish, or the fire protection district maintaining a full-time regularly paid fire department, regardless of the specific duties of such person within the fire department, who is under investigation with a view to possible disciplinary action, demotion, or dismissal.

Our office has interpreted La. R.S. 33:2181 as applying to all situations when an authorized person begins to make inquiry or collect evidence concerning a situation with a fire employee where the end result is with a view to possible disciplinary action, demotion or dismissal. See Atty. Gen. Op. Nos. 08-0291, 08-0052, and 07-0073. Further our office has opined that any action taken by formal investigation authorities which could possibly affect the job status of the fire employee requires that the minimum standards of La. R.S. 33:2181 apply. See Atty. Gen. Op. No. 04-0180.

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Your first inquiry relates to applicability of La. R.S. 33:2181 when the municipal fire and police civil service board (which is not the appointing authority or the appointing authority's designee) conducts an investigation into the conduct of a fire employee. As stated above, La. R.S. 33:2181 applies to all situations when an authorized person or formal investigating authorities take action which could possibly affect the job status of the fire employee. See Atty. Gen. Op. Nos. 08-0291, 08-0052, 07-0073, and 04-0180.

It is not the title of the authorized person or formal investigating authorities conducting the investigation that determines the applicability of La. R.S. 33:2181, but rather, the possible disciplinary action, demotion or dismissal of the fire employee that determines its applicability.

Although the terms "appointing authority or the appointing authority's designee" are referenced in La. R.S. 33:2181, there is no provision in La. R.S. 33:2181 that limits the application of La. R.S. 33:2181 to investigations conducted by the "appointing authority or the appointing authority's designee." The minimum standards of La. R.S. 33:2181 would apply to all authorized investigations if the possible outcome will affect the fire employee's job status through disciplinary action, demotion or dismissal.

As stated above, municipal fire and police service boards are authorized to conduct investigations of any officer or employee of the classified service with a view to disciplinary action. Therefore, it is the opinion of this office that the provisions of La. R.S. 33:2181 are applicable to the municipal fire and police civil service board whenever it conducts investigations of fire classified employees with a view to disciplinary action even though the municipal fire and police civil service board is not the appointing authority or the appointing authority's designee.

La. R.S. 40:2531, the Law Enforcement Officers' Bill of Rights, requires that certain minimum standards must be applied when a police employee is under investigation with a view to possible disciplinary action, demotion, or dismissal.

La. R.S. 40:2531(A) defines "police employees" as follows;

Police employees as defined by La. R.S. 40:1372(5), Louisiana P.O.S.T certified probation and parole officers employed by the Louisiana Department of Public Safety and Corrections, division of probation and parole, and to those law enforcement officers employed by any municipality and campus police employed at any state-supported college or university who are under investigation.

Our office has interpreted La. R.S. 40:2531 as applying to all situations when an authorized person begins to make inquiry or collect evidence concerning a situation with a police employee where the end result is with a view to possible disciplinary action, demotion or dismissal. See Atty. Gen. Op. No. 07-0073. Further our office has opined that any action taken by formal investigation authorities which could possibly affect the

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job status of the fire employee requires that the minimum standards of La. R.S. 40:2531 apply. See Atty. Gen. Op. No. 93-0052.

Your second inquiry relates to applicability of La. R.S. 40:2531 when the municipal fire and police civil service board conducts an investigation of a police employee.

As stated above, municipal fire and police service boards are authorized to conduct investigations of any officer or employee of the classified service with a view to disciplinary action. Therefore, it is the opinion of this office that the provisions of La. R.S. 40:2531 are applicable to the municipal fire and police civil service board whenever it conducts investigations of police classified employees with a view to disciplinary action.

Your third inquiry relates to the definition of the phrase "police employees defined by La. R.S. 40:1372(5)" as this phrase is used in La. R.S. 40:12531(A) in providing a list of individuals to whom this statute applies. In order to define "police employees" it is necessary to look at the provisions of La. R.S. 40:1372(4), La. R.S. 40:1372(5), and La. R.S. 40:1379(B).

La. R.S. 40:1372(4) defines "employee" as any employee of the Division of State Police in the Department of Public Safety. La. R.S. 40:1372(5) defines "police employee" as any employee who is assigned to police work as peace officer pursuant to La. R.S. 40:1379. La. R.S. 40:1379(B) defines a "peace officer" as police employees of the division.

When these three provisions are read together, it is clear that the phrase "police employees defined by La. R.S. 40:1372(5)" applies to police employees of the Division of the State Police in the Department of Public Safety. Therefore, it is the opinion of this office that the phrase "police employees as defined by La. R.S. 40:1372(5)," as used in La. R.S. 40:2531, applies only to police personnel employed by the Division of State Police in the Department of Public Safety.

Your fourth inquiry relates to the definition of "law enforcement officers employed by any municipality" as used in La. R.S. 40:2531(A) in describing the applicability of the statute. La. R.S. 40:2531 does not define the term "law enforcement officer employed by a municipality." When a term is not defined in a particular statute our office has referred to other revised statutes in order to create a definition appropriate to the statute. See La. Atty. Gen. Op. Nos. 93-0052, 91-0557, and 90-0601. Our office has also concluded in the past that an individual's identity as a "law enforcement officer" is determined from that person's function and authority. See La. Atty. Gen. Op. No. 93-0052.

We note that other statutes define law enforcement officer as including different types of individuals for purposes of application of such laws. See, for example La. R.S. 14:30, La. R.S. 14:329, La. R.S. 15:33, La. R.S. 15:1314, La. R.S. 15:1302, La. R.S. 37:1782.

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However, we have referred to the definition of "peace officer" in La. R.S. 40:2402(3)(a) to provide some statutory guidance on some examples of the general duties of a law enforcement officer.

La. R.S. 40:2402(3)(a) defines the term "peace officer" as follows:

"Peace officer" means any full-time employee of the state, a municipality, a sheriff, or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state, but not including any elected or appointed head of a law enforcement department.

Elected or appointed heads of a law enforcement department not considered "peace officers" for the purposes of La. R.S. 40:2402(3)(a) in order to exempt them from training requirements. However, elected or appointed head of a law enforcement department have the authority to make arrests, perform of searches and seizures, or execute criminal warrants, and are responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state and should be considered a "peace officer" for the purposes of this opinion.

Based on the duties of a "peace officer" provided in La. R.S. 40:2402(3)(a), the phrase "law enforcement officers employed by any municipality," as used in La. R.S. 40:2531, can be defined as an employee whose duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and who is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state.

In conclusion, it is the opinion of this office that the provisions of La. R.S. 33:2181 (Fire Fighters' Bill of Rights) and La. R.S. 40:2531 (Law Enforcement Officers' Bill of Rights) are applicable to the municipal fire and police civil service board whenever it conducts investigations of fire and police classified employees with a view to disciplinary action. It is the further opinion of this office that the phrase "police employees as defined by La. R.S. 40:1372(5)," as used in La. R.S. 40:2531, applies only to police personnel employed by the Division of State Police in the Department of Public Safety. Additionally, it is the opinion of this office that the phrase "law enforcement officers employed by any municipality," as used in La. R.S. 40:2531, applies to all police employees, including the elected or appointed head of a law enforcement department, who are authorized to make arrests, perform searches and seizures, or execute criminal warrants, and who are responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state.

We hope that this opinion adequately addresses the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: Madeline S. Carbonette
Madeline S. Carbonette
Assistant Attorney General

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